IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/10/2002

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO. 21619 OF 2002
and
W.P.M.P.NO.29908 OF 2002

M/s. Evergreen Suppliers
No.9 C.N.K. ROAD,
Chennai 5.
Rep. by its Chief Supervisor .. Petitioner

-Vs-

1. The Commissioner,
Thiruvottiyur Municipality,
Chennai 19.

2. M/s. Arcadia Shipping and
Trading Company,
27, Ennore Express Road,
Thiruvatriyur, Chennai 19. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus as stated therein.

For Petitioner : M/s. Gupta & Ravi

For Respondents 1 : Mr.V. Subbarayan

:J U D G M E N T

The petitioner has prayed for issuing Writ of Mandamus directing the first respondent to release the lorries bearing Registration Nos. TN-07 Z 6694 and TN-07 Z 6696 and the crane owned by the petitioner.

2. Petitioner is a partnership firm engaged in the business of stevedoring, transportation, loading and unloading materials pertaining to various third parties. It has been alleged that the petitioner has entered into such an agreement with the respondent No.2. For the aforesaid purpose of transportation, etc., it is necessary for the petitioner to utilise his own lorries and other machineries such as cranes. During March 2002, two of the lorries and a crane belonging to the petitioner were stationed at the premises belonging to the respondent No.1, but rented out to others. The aforesaid

premises was sealed by the first respondent on the ground that the dues of the first respondent had not been paid. When the petitioner came to know about the aforesaid sealing of the premises, wherein his two lorries and a crane had been stationed, a written representation was filed before the first respondent for release of the aforesaid properties. However, since no action was taken, the present writ petition has been filed.

3. It has been submitted that even assuming that the second respondent or any other person or authorities had failed to pay some dues of the first respondent, and the first respondent has right to seal the premises, the properties belonging to third parties like the petitioner cannot be retained by the first respondent and as such there should be a direction for return of those articles.

4. A counter-affidavit was filed on behalf of the respondent No.1. It has been submitted that the disputed area had been leased out to Hindustan Container Terminal and the premises had been sublet by Hindustan Container Terminal to various sub-lessees, including the respondent No.2. It has been further submitted that many such sub-lessees have been asked to pay the dues. The first respondent had placed reliance upon the provisions contained in Sections 340 to 346 of the Tamil Nadu District Municipality Act, 1920 in support of the contention that the respondent No.1 has legal authority to seal the premises including the properties standing on such premises.

5. The provisions contained in Sections 340 t 346 do not prescribe anywhere that the properties belonging to third parties can be sealed or seized in the purported exercise of authority under those provisions from the original lessee or even the sub-lessees. In the present case, there is no specific assertion that two lorries and the crane in question do not belong to the present petitioner nor there is any denial that the petitioner has entered into some agreement with the respondent No.2. It is not the case of the respondent No.1 that the present petitioner is a sub-lessee under Hindustan Container Terminal. Whatever may be the justification on the part of the respondent No.1 to seal the premises let out by it and seize the properties of the original lessee or even the sub-lessees, there is no justification to seize the properties belonging to third parties and the so called lien in respect of the property of the lessee or sub-lessee by no stretch of imagination can extended to the properties belonging to such third parties.

6. Learned counsel appearing for the respondent No.1 has submitted that the sub-lessees have not been paying the amount to the lessee Hindustan Container Terminal and therefore, the lessee has defaulted in making payment to the first respondent. This logic cannot extend to the persons who happen to be using the premises by virtue of some other agreements.

7. For the aforesaid reasons, I allow the writ petition and direct the respondent No.1 to forthwith release the lorries bearing Registration Nos.TN-07 Z 6694 and TN-07 z 6696 and the crane in question to the petitioner. The writ petition is accordingly allowed with a consolidated

costs of Rs.2,000/-. The order regarding release of properties should be carried out within a period of ten days from the date of communication of the order. Consequently, WPMP.No.29908 of 2002 is closed.

Index : Yes
Internet : Yes
dpk

To

1. The Commissioner,
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Chennai 19.

2. M/s. Arcadia Shipping and
Trading Company,
27, Ennore Express Road,
Thiruvatriyur, Chennai 19.

P.K. MISRA, J.

JUDGMENT IN WP.No.21619/2002
and WPMP.No.29908 OF 2002